

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROOFERS LOCAL 149 SECURITY
BENEFIT TRUST FUND, ET AL.

Plaintiffs, CASE NO. 05-60218
vs. HONORABLE JOHN CORBETT O'MEARA
HONORABLE STEVEN D. PEPE
MILBRAND ROOFING GROUP, INC.
ET AL.

Defendants.

ORDER GRANTING DEFENDANT RICHARDSON'S MOTION FOR PROTECTIVE ORDER (Dkt. #74), DENYING DEFENDANT MILBRAND ROOFING'S MOTION FOR PROTECTIVE ORDER (Dkt. #57), GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT (Dkt. #63), AND DENYING DEFENDANT JOHN MILBRAND AND MILBRAND ROOFING GROUP'S MOTION TO COMPEL DEPOSITIONS (Dkt. #79)
AND
MODIFIED SCHEDULING ORDER

On March 14, 2007, a telephonic hearing was held regarding Defendant Richardson's Motion for Protective Order (Dkt. #74), Defendant Milbrand Roofing's Motion for Protective Order (Dkt. #57), Plaintiffs' Motion for Leave to File Second Amended Complaint to Pierce the Corporate Veil of Defendant, Milbrand Roofing Company and to Add JKM Roofing Company (Dkt. #63) and Defendant Jon Milbrand and Milbrand Roofing Group's Motion to Compel Deposition duces tecum of Co-Defendants and for Sanctions (Dkt. #79). These motions were referred for hearing and determination pursuant to 28 U.S.C. § 636 (b)(1)(A) (Dkt. #81).

For reasons stated on the record and indicated below **IT IS ORDERED THAT:**

1. On March 12, 2007, Judge O'Meara entered an order granting default judgement as to Milbrand Roofing Company. Accordingly, Defendant Milbrand Roofing's Motion for Protective Order (Dkt. #57) is thereby rendered moot and is **DENIED**.

2. Plaintiffs' Motion for Leave to File Second Amended Complaint to Pierce the Corporate Veil of Defendant, Milbrand Roofing Company and to Add JKM Roofing Company is **GRANTED** (Dkt. #63). Under Fed. R. Civ. P. § 15(a):

[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Courts are liberal in allowing parties to amend complaints, "which reinforces one of the basic policies of the federal rules – that pleadings are not an end in themselves but are only a means to assist in the presentation of a case to enable it to be decided on the merits." 6 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1473, at 521 (2d ed.1990). The Supreme Court has stated that liberally granting leave to amend complaints under Rule 15(a) is "a mandate to be heeded," *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Court also indicated that motions to amend shall be denied due to "undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment . . ."Id.

Plaintiffs' proposed amended complaint raises a number of controversies and factual disputes, which do not have a reasonably apparent resolution at this stage of the proceedings. As such, Plaintiff's proposed amended complaint cannot be regarded as futile, and thus Plaintiff should be granted leave to amend under Rule 15(a). In addition, Jon Milbrand and William Richardson are already defendants in this action based on Plaintiffs' claims of breach of

fiduciary duty. It is not unreasonable that they defend against an alternative theory of liability related to the current claims. Accordingly, Plaintiffs are permitted to file their Second Amended Complaint to Pierce the Corporate Veil of Defendant, Milbrand Roofing Company and to Add JKM Roofing Company.

3. Defendant Jon Milbrand and Milbrand Roofing Group's Motion to Compel Deposition duces tecum of Co-Defendants and for Sanctions is **DENIED** and Defendant Richardson's Motion for Protective Order is **GRANTED** (Dkt. #79 & #74). Defendants Milbrand Roofing Group and Jon K. Milbrand deposed Defendant Richardson on August 7, 2006 (See, Dkt. #74, Ex. A). Exhibit "A" reflects that Ms. Milbrand, counsel for Defendants Milbrand Roofing Group and Jon K. Milbrand, was present at the deposition of Defendant Richardson, examined Defendant Richardson at length beginning at page 109 and continued the examination to page 150, and had an opportunity to examine Defendant Richardson about certain documents.

Fed. R. Civ. P. 30(a)(2)(B) provides:

. . . a party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties, the person to be examined already has been deposed in the case . . .

Because counsel for Defendant Jon Milbrand and Milbrand Roofing Group has already had an opportunity to examine Defendant Richardson and has not provided sufficient cause why a second deposition is warranted, their motion to compel a second deposition is **DENIED**. A protective order is entered precluding his re-deposition absent further order of this Court. Defendants' counsel retains the right to question parties at trial, and Mr. Richardson's counsel indicated Mr. Richardson would be present at trial.

4. After consultation with Judge O'Meara's chambers, the following dates will replace the existing dates on the scheduling order:

Discovery Cutoff:	5/30/07
Dispositive Motions due:	6/20/07
Final Pretrial Order due:	8/29/07
Final Pretrial Conference:	9/5/07 at 2:00 PM.
Trailing Trial Term Date:	10/02/07

All unaffected dates remain in full force and effect absent further order by this Court.

SO ORDERED.

Dated: March 19, 2007
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2007, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: Sarah C. Arnold, Michael J. Asher, Mark W. Jane, Danya Milbrand, David J. Selwocki, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Milbrand Roofing Co., c/o Michael K. Roye, 2971 Bellevue St., Detroit, MI 48207, Michael K. Roye, 1508 Amelia, Royal Oak, MI 48073.

s/ James P. Peltier
James P. Peltier
Courtroom Deputy Clerk
U.S. District Court
600 Church St.
Flint, MI 48502
810-341-7850
pete_peliter@mied.uscourts.gov